



**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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Nos. 00-5212, 5213

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**MICROSOFT CORPORATION,**

*Defendant-Appellant,*

**v.**

**UNITED STATES OF AMERICA and STATE OF NEW YORK, *et al.*,**

*Plaintiff-Appellees.*

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**ON APPEAL FROM THE UNITED STATES OF DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE**

Pursuant to Federal Rule of Appellate Procedure 29 and this Court's Order of October 11, 2000, the Project to Promote Competition & Innovation in the Digital Age ("ProComp") respectfully moves this Court for leave to file a brief in this case as amicus curiae. Appellees have consented to the filing of the brief in support of jurisdiction, but appellant has withheld consent.

ProComp is a trade association founded in 1998 by companies such as Sun Microsystems, Oracle, Netscape, and The Sabre Group for the purpose of analyzing competition and other policy issues relating to information technology. ProComp's membership consists of a number of companies and trade associations with particular knowledge and expertise in markets relevant to the issues raised in *United States v. Microsoft*, Nos. 98-1232, 98-1233 (D.D.C.), and to the future of the information technology sector of the economy.

ProComp has a vital interest in and is able to provide the Court with a unique perspective concerning two crucial issues before the Court: (1) the critical importance of the legal questions presented in this matter to the information technology sector; and (2) the general significance and public importance of the resolution of this case to the U.S. economy in general and the information technology sector in particular.

First, ProComp's member companies have observed first-hand the harm to their industries and the U.S. economy as a result of the appellant's market conduct already deemed unlawful by the District Court. ProComp represents an exceptional combination of views which may be relevant to this Court's disposition of the matter. Members of ProComp participate in a wide range of technology industries, covering software and hardware sectors for consumer and corporate use, and Internet-based businesses. These companies are uniquely knowledgeable of

information technology industries central to the health of the U.S. economy. The legal questions presented in this matter will have a lasting impact on these industries; and members of the amicus curiae are uniquely capable of assessing the significance of these issues to their industries and the overall economy. Thus, the amicus curiae can make clear from their actual experience in the market the general importance of the legal issues that will be resolved by this Court.

Second, most members of ProComp have either posed a competitive threat to Microsoft or would likely do so in the near future. The unique position of the amicus curiae was reflected in the fact that some of the key witnesses at trial have been from companies that founded ProComp. The outcome of this case will determine these companies' vulnerability to Microsoft's monopolizing tactics as well as the rules of competition applicable not only to Microsoft but to all participants in the information technology industry.

ProComp has been intimately involved in this matter, and has been able to contribute its unique insight to both the District Court and the Supreme Court. State appellees designated counsel for ProComp, Robert H. Bork, as amicus curiae to file proposed conclusions of law pursuant to the District Court's order of November 19, 1999. He filed these proposed conclusions of law on February 1, 2000. Furthermore, ProComp filed an amicus curiae brief in the Supreme Court of the United States in support of the appellees' request for expedited review.

Because of its particular perspective and its interest in a just and timely resolution of the case, ProComp requests leave to file a brief as amicus curiae.

Dated: October 24, 2000

Respectfully submitted,

A handwritten signature in black ink, reading "Robert H. Bork". The signature is fluid and cursive, with the first name "Robert" and last name "Bork" clearly legible. The signature is positioned above a horizontal line.

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